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No. 89-1030

In the Supreme Court of the United States

OCTOBER TERM, 1989

GWENDOLYN BROWN, PETITIONER

v.

JAMES G. LEDBETTER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

ANTHONY J. STEINMEYER
IRENE M. SOLET
Attorneys

Department of Justice
Washington D.C. 20530
(202) 633-2217

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QUESTION PRESENTED

Whether petitioner, a recipient of Aid To Families With Dependent Children (AFDC) under Title IV-A of the Social Security Act, 42 U.S.C. 601 *et seq.*, may bring an action under 42 U.S.C. 1983 to challenge the failure of state officials to provide particular child support enforcement services to her in purported violation of Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-86a) is reported at 875 F.2d 1558. The opinions of the district court (Pet. App. 1c-37c, 3d-18d) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 27, 1989. A petition for rehearing was denied on September 26, 1989 (Pet. App. 1b-2b). The petition for a writ of certiorari was filed on December 22, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner receives Aid To Families With Dependent Children (AFDC) benefits from the State of Georgia

under Title IV-A of the Social Security Act, 42 U.S.C. 601 *et seq.* In this action she challenges the alleged failure of state officials to provide child support enforcement services pursuant to Title IV-D of the Social Security Act, 42 U.S.C. 651 *et seq.*

AFDC is a cooperative federal and state program providing assistance to families deprived of child support through the death, disability, or absence of a parent when the family's income falls below a specified level determined to be necessary for subsistence. 42 U.S.C. 606(a). States must administer the program in accordance with federal statutory and regulatory requirements to receive the federal financial contribution. 42 U.S.C. 602(a). The Social Security Act requires each State, as a condition of receiving federal AFDC funds, to set up a child support enforcement unit to locate absent parents, establish paternity, and obtain child and spousal support. 42 U.S.C. 602(a)(27), 652(a)(1). The federal government supplies 66% of the administrative costs of this unit.[1] In addition, the federal government makes incentive payments to reward States for effective operation of the child support enforcement program. 42 U.S.C. 658.

As a condition of receiving AFDC benefits, individual recipients are required to assign to the State any rights they may have to spousal or child support, and to cooperate with the State's efforts to establish paternity for their children and obtain child support. 42 U.S.C. 602(a)(26). If child support is recovered, the first $50 is passed through to the AFDC recipient without affecting her eligibility for

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[1] The federal share was 70% in fiscal years 1984 through 1987, 68% in fiscal years 1988 and 1989, and 66% for fiscal year 1990 and thereafter. 42 U.S.C. 655(a)(2). Certain specific services (*i.e.*, automatic data processing and information retrieval, laboratory services in establishing paternity) are funded by the federal government at a 90% level. 42 U.S.C. 655(a)(1).

the program or the amount of her benefit. 42 U.S.C. 602(a)(8)(A)(vi), 657 (b)(1). In addition, in States (such as Georgia) where the level of AFDC benefit payments was below the state standard of need in July 1975, support payments collected by the State are passed through to the recipients to "fill the gap" between the actual amount of benefits and the state standard of need. 42 U.S.C. 602(a)(28); see also *Quarles* v. *St. Clair*, 711 F.2d 691, 694-695 (5th Cir. 1983).

Title IV-D directs the Secretary of Health and Human Services to establish standards for state child support enforcement programs (42 U.S.C. 652(a)(1)) and to conduct periodic audits to determine whether actual operation of each State's program complies with all statutory and regulatory requirements (42 U.S.C. 652(a)(4)). Title IV-D also establishes monetary penalties, ranging from one to five percent of the federal contribution to the State's AFDC program, if a federal audit reveals that the State's child support enforcement unit is not operating in "substantial compliance" with federal requirements. 42 U.S.C. 603(h).[2] The Secretary has determined by regulation that a state program will be deemed in "substantial compliance" if it meets audit criteria for most essential program functions in 75% of the individual cases reviewed. 45 C.F.R. 305.20.

2. Petitioner has three minor children. The oldest was born out of wedlock. Pet. App. 14a-16a. Petitioner is divorced from the father of her two younger children, and the divorce decree ordered the father to pay child support for both of them. *Id.* at 16a. At the time of the court of appeals decision, the Georgia Title IV-D agency had not established paternity for petitioner's oldest child and had not collected the support payments for her younger

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[2] The size of the penalty depends on the number of consecutive findings of noncompliance. 42 U.S.C. 603(h).

children. Pet. App. 15a-16a. In his Brief in Opposition, however, respondent Commissioner of the Georgia Department of Human Resources indicates that the State has now obtained an order of paternity concerning petitioner's oldest child and that the child's father is now paying support for her. The Commissioner also reports that the father of the two younger children also has now made support payments. Resp. Br. in Opp. 6-7.

Petitioner intervened in an action in the United States District Court for the Northern District of Georgia brought by another AFDC recipient, pursuant to 42 U.S.C. 1983, to obtain Title IV-D agency assistance in establishing paternity and obtaining support for her child. Pet. App. 19a.[3] Together with another intervenor, their second amended complaint sought redress against the Commissioner, based on his alleged systematic failure to operate a statewide child support enforcement program as required by Title IV-D and its implementing regulations, and against the Secretary based on his alleged failure to assure that the Georgia IV-D program complied with federal statutory and regulatory standards. Pet. App. 20a.

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[3] The original plaintiff sued the Commissioner of the Georgia Department of Human Resources seeking declaratory and injunctive relief for alleged violations of her right to AFDC benefits under Title IV-A of the Social Security Act, her right to child support enforcement services under Title IV-D of the Act, and her due process rights under the Fourteenth Amendment. Pet. App. 18a; Resp. Br. in Opp. App. 12-14. The complaint also named as a defendant the Secretary of Health and Human Services, alleging that the Secretary had failed to assure compliance by the State with the requirements of Titles IV-A and IV-D and regulations issued thereunder. Pet. App. 19a; Resp. Br. in Opp. App. 14-15. The Title IV-A claims against the Commissioner concerning payment of AFDC benefits were eventually settled by a consent order. Pet. App. 18a-19a. Petitioner, joined by the original plaintiff and another intervenor, then filed an amended complaint and moved for class certification. *Id.* at 19a.

The district court dismissed the complaint on the grounds that Congress had foreclosed private enforcement of Title IV-D against the State under Section 1983 and that Title IV-D created no implied right of action. Pet. App. 22a, 13c-31c.[4]

Petitioner and her co-plaintiffs then filed a third amended complaint asserting claims only against the Secretary under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, and for mandamus relief pursuant to 28 U.S.C. 1361. Pet. App. 22a. The district court dismissed this complaint as well (*id.* at 24a, 3d-18d), holding that plaintiffs lacked standing under the APA because their complaint failed to set forth facts sufficient to establish either causation or redressability. *Id.* at 24a, 8d. Petitioner alone then filed a notice of appeal challenging the orders dismissing the claims against the Commissioner and the Secretary. *Id.* at 24a.

3. The court of appeals affirmed. With regard to petitioner's claims against the Commissioner, the court recognized that under this Court's decision in *Maine* v. *Thiboutot*, 448 U.S. 1 (1980), and subsequent cases, a violation of a federal statute is generally cognizable under Section 1983, but such an action is not available if Congress has either foreclosed private enforcement or has created no enforceable rights in the relevant statutory provisions. Pet. App. 25a-26a. The court of appeals pointed out that in *Cort* v. *Ash*, 422 U.S. 66 (1975), this Court articulated four factors for determining whether a statute creates a private cause of action (Pet. App. 28a-29a); the court of appeals concluded that the first *Cort* factor—whether that plaintiff is one of the class for whose

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[4] The district court also denied plaintiffs' request for class certification. See Pet. App. 22a, 36c.

"especial benefit" the statute was enacted—is helpful to the Section 1983 analysis. Pet. App. 29a-30a. The court then determined that Title IV-D of the Social Security Act created no enforceable rights to child support enforcement services for individual AFDC recipients, and found it unnecessary to reach the issue of whether the statute foreclosed private remedies. Pet. App. 26a, 30a-36a.

The court based its conclusion regarding the lack of enforceable rights on several characteristics of the statute and its legislative history. Pet. App. 30a-31a. Unlike Title IV-A of the Act, which provides funds to children in need, Title IV-D seeks to recover those funds for the Treasury. Pet. App. 31a. In enacting Title IV-D, Congress was primarily concerned with collecting support payments to lessen the cost of the AFDC program to the taxpayers and to reduce the welfare rolls. Pet. App. 31a-34a. The court also pointed out that Title IV-D is not a legal assistance program for AFDC recipients, but rather a program in which recipients assign their support rights to the State and agree to cooperate with the State in its efforts to establish and enforce support obligations. Pet. App. 35a-36a. Accordingly, the court concluded that petitioner did not have rights to support enforcement services under Title IV-D that were enforceable through a Section 1983 action. Pet. App. 36a.

With respect to the claims against the Secretary, the court of appeals held that petitioner lacked Article III standing. Pet. App. 36a-44a. Although the court acknowledged that petitioner had alleged two types of cognizable injury—the loss of the $50 of child support that would be passed through to her if collected by the State and the failure to establish her child's paternity—the court held that the nexus between these injuries and the Secretary's alleged unlawful action was "attenuated at best." *Id.* at 42a. The court further held that petitioner had failed to

show that her situation would be improved if the court were to award the relief she sought against the Secretary. *Id.* at 43a. The court pointed out that where, as here, the statute provides its own comprehensive enforcement scheme, these enforcement procedures may not be bypassed by means of individual actions under Section 1983. Pet. App. 43a-44a.[5]

ARGUMENT

Although this case is not moot, its practical significance has been substantially diminished because petitioner has now obtained the support services that she sought. In any event, this case does not warrant review because the court of appeals correctly rejected petitioner's claim that Title IV-D of the Social Security Act establishes rights to particular child support enforcement services enforceable through a Section 1983 action.[6]

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[5] Judge Clark dissented from the decision with respect to the affirmance of the dismissal of the Section 1983 action against the Commissioner. Pet. App. 46a-86a.

[6] Petitioner does not seek review of the dismissal of her claims against the Secretary. Pet. 12 n.1. Under Rule 12.4 of the rules of this Court, the Secretary nevertheless remains a party before this Court. The Secretary also retains a substantial interest in this matter. As discussed below, the Title IV-D program was designed by Congress to save federal and state funds by recovering assigned support payments from absent parents of children in families receiving AFDC benefits, and to reduce the number of welfare recipients. This plan would be undermined if, through availability of a cause of action under Section 1983, Title IV-D became an entitlement program which guaranteed specific child support enforcement services to all individual AFDC recipients. As the court of appeals pointed out (Pet. App. 44a), recognition of a Section 1983 remedy in this case would generate "multitudinous suits" in federal court, diverting state resources from the effort to operate the most efficient overall program of child support enforcement.

1. Although not moot,[7] this case is an inappropriate vehicle for review because petitioner has now obtained the essential elements of the relief that she requested. The Commissioner reports that he has been successful in establishing paternity for petitioner's oldest child and that since May 1989 the child's father has been paying support on her behalf. Resp. Br. in Opp. 6. In addition, the Commissioner reports that the father of petitioner's two younger children has made support payments under his divorce decree with petitioner. *Id.* at 6-7. Petitioner thus has now received the services to which she claims to be entitled under Title IV-D. Particularly in light of these changed circumstances, review of petitioner's claims is not warranted.

2. In any event, those claims are not well founded. Petitioner's principal contention is that there is widespread confusion concerning the proper standard for determining whether Section 1983 actions may lie from violations of federal statutes, and that, reflecting this confusion, the court of appeals improperly relied upon *Cort* v. *Ash*. Pet. 13-36. This contention is unavailing.

Contrary to petitioner's submission, the governing standard for evaluating whether Section 1983 actions may be brought for claimed violations of federal statutes is settled. Violations by state officials of federal statutes give rise to a cause of action under 42 U.S.C. 1983 (*Maine* v. *Thiboutot*, 448 U.S. 1 (1980)); a Section 1983 action is not available, however, if (1) Congress has foreclosed private enforcement of the claim in the statute itself (*Middlesex*

[7] Petitioner's claim is not moot because the plaintiffs' complaint included a request for judicial oversight of systematic reform. See, *e.g.*, Second Amended Complaint, para. 90 (C.A. E.R. 4) (requesting that the court "[r]etain jurisdiction over Defendants until such time as the Court is satisfied that the practices, policies, and omissions alleged herein are corrected and will not recur").

County Sewerage Auth. v. *National Sea Clammers Ass'n*, 453 U.S. 1 (1981)), or (2) the pertinent federal statute does not create "enforceable rights" for the purpose of Section 1983 (*Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1 (1981)). See also *Golden State Transit Corp.* v. *City of Los Angeles*, 110 S. Ct. 444, 448-449 (1989); *Wright* v. *City of Roanoke Redevelopment & Housing Auth.*, 479 U.S. 418, 423 (1987). Recognizing that implied cause of action cases like *Cort* v. *Ash*, can be helpful tools in the analysis of congressional intent that this standard requires, this Court itself has cited *Cort* and its progeny in Section 1983 analysis of federal statutes.[8] Thus, contrary to petitioner's assertion, there is no widespread confusion regarding the proper standard for evaluating whether a Section 1983 action may lie for violations of a federal statute.[9]

The court of appeals correctly applied the established standard from *Thiboutot*, *Sea Clammers*, and *Pennhurst* (Pet. App. 24a-26a, 36a) and concluded that, under *Pennhurst*, Title IV-D does not create "enforceable rights" to particular child support enforcement services for individ-

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[8] See *Golden State Transit Corp.*, 110 S. Ct. at 448 (citing the *Wright* dissent and noting its citation to *Cort* v. *Ash*); *Wright*, 479 U.S. at 428 (citing *Cannon* v. *University of Chicago*, 441 U.S. 677, 704-707 (1979), which applies *Cort* v. *Ash*).

[9] As petitioner points out (Pet. 17 n.3, 25 n.5), *Baliles* v. *Virginia Hospital Ass'n*, No. 88-2043 (argued Jan. 9, 1990), presents a question concerning the availability of a Section 1983 remedy for violations of a federal statute. Because the question presented in that case concerns the availability of such a remedy under a particular statute, rather than a challenge to the governing standard, it is not necessary to hold this case for disposition in light of *Baliles*. It should be pointed out, however, that both the petitioner's and the respondent's briefs in *Baliles* discuss, at least in passing, the relationship between *Thiboutot* and the *Cort* v. *Ash*/*Cannon* v. *University of Chicago* implied right of action line of cases. See Pet. Br. 10-11; Resp. Br. 22 n.24.

ual AFDC recipients. The fact that the court invoked the first factor of *Cort* v. *Ash* to aid its inquiry does not in any way undermine the correctness of its analysis.

As the structure of the Title IV-D statute demonstrates, the program was crafted to help the government recoup welfare costs and reduce the number of welfare recipients. The entire Title IV-D program is built around the statutory requirement that AFDC recipients assign their rights to child support to the State and cooperate with the State in its efforts to establish paternity and enforce support obligations. 42 U.S.C. 602(a)(26). The child support rights "assigned to the State under section 606(a)(26)" become "an obligation *owed to such state* by the individual responsible for providing such support." 42 U.S.C. 656(a) (emphasis added). Pursuant to that assignment of support rights, it becomes the State's prerogative to undertake the support enforcement efforts it deems appropriate under an overall plan meeting federal statutory and regulatory standards. 42 U.S.C. 602(a)(27), 652(a)(1). Moreover, although the federal standards require statewide operation of a program of services designed to serve all AFDC applicants and recipients (see 45 C.F.R. 302.31, 302.33), whether a State has adequately met these federal requirements is measured by a standard of "substantial compliance." 42 U.S.C. 603(h). The Secretary has determined by regulation that "substantial compliance" means meeting audit criteria in 75% of individual cases. 45 C.F.R. 305.20.[10] Clearly, this statute and its implementing regula-

[10] The regulations specifically permit States to develop a case assessment and prioritization system for determining the order in which individual cases will be handled. 45 C.F.R. 303.10.

tions do not envision a program creating enforceable rights to services in specific individuals.[11]

The pass-through to the AFDC recipient of the first $50 per month of support payments collected by the State does not suggest otherwise. Whether such a pass-through will be available depends not only on successful efforts by the State to establish paternity or a support obligation, but also on the actual collection of support from an absent parent. Thus, a recipient's expectation of a pass-through payment is not a "specific and definite" right (*Wright*, 479 U.S. at 432) mandated by federal statute upon which petitioner can base a cause of action under Section 1983. For the same reason, the "fill the gap" provision (42 U.S.C. 602(a)(28)) also creates no such right. Like the $50 pass-through, expectation of this additional benefit is contingent on a variety of factors in addition to the State's efforts to establish and collect support obligations and also does not create a "specific and definite right." [12]

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[11] Indeed, if such a right were found and individual AFDC recipients were free to bring suits in federal court whenever they believed child support enforcement services provided by the State were inadequate, Title IV-D programs could be saddled with a burden of litigation which would frustrate accomplishment of their statutory objective.

[12] In view of its decision regarding the lack of enforceable rights, the court of appeals found it unnecessary to reach the issue whether the Title IV-D statute precludes private enforcement. Pet. App. 26a. In fact, the statute's comprehensive oversight and enforcement scheme demonstrates that Congress intended to foreclose private enforcement of its requirements through actions under Section 1983. Title IV-D requires the Secretary to audit every state program at least once every three years. 42 U.S.C. 652(a)(4). Federal regulations establish extensive and detailed audit criteria (see 45 C.F.R. Pt. 305). The statute itself prescribes monetary penalties ranging from one to five percent of the federal contribution to the State's AFDC program, to be imposed where a federal audit reveals that the State's Title IV-D agency is

Petitioner's suggestion (Pet. 19) that the court of appeals decision conflicts with the decisions of other courts regarding the availability of a Section 1983 cause of action for alleged state failure to comply with the Title IV-D program is unfounded. None of the cases cited by petitioner involved an action (as in this case) for particular child support enforcement services; each of the cases principally involved the fundamentally different situation of a challenge to the State's treatment of funds already in hand, at least some of which were earmarked by statute and regulation to the AFDC recipient.[13]

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not operating in "substantial compliance" with federal requirements. 42 U.S.C. 603(h). In addition, the statute provides for incentive payments to States that operate cost-effective Title IV-D programs. 42 U.S.C. 658. This complex scheme of federal monitoring, enforcement, and incentives demonstrates that Congress did not intend that state compliance with federal requirements for operation of child support enforcement programs would be policed through private suits by recipients under Section 1983.

[13] See *Bennett* v. *White*, 865 F.2d 1395 (3d Cir.), cert. denied, 109 S. Ct. 3257 (1989); *Quarles* v. *St. Clair*, 711 F.2d 691 (5th Cir. 1983); *Vanscoter* v. *Bowen*, 706 F. Supp. 1432 (W.D. Wash. 1988), appeal pending No. 89-35292 (9th Cir.); *Beasley* v. *Harris*, 671 F. Supp. 911 (D. Conn. 1987). To be sure, *Quarles* also involved a claim that a State had not made the necessary arrangements to enter into certain cooperative agreements at all (711 F.2d at 708-713); such a claim, however, is distinguishable from the claims for particular services at issue here. None of the cases cited by petitioner, moreover, addresses the question whether a Section 1983 cause of action is proper.

Petitioner's related claim (Pet. 19-23) that there is confusion in the courts of appeals regarding the availability of Section 1983 remedies under other statutes also does not warrant review. Like the court of appeals decision in this case, the holdings of those cases rest on an analysis of the specific statute at issue. Petitioner cites four decisions from courts of appeals analyzing remedies for violations of other statutes. Two of the four cite *Cort* as helpful in the Section 1983 analysis (see *Clallam County* v. *Department of Transportation*, 849 F.2d 424, 428 (9th Cir. 1988), cert. denied, 109 S. Ct. 790 (1989); *Edwards* v. *District of Columbia*, 821 F.2d 651, 654 n.4 (D.C. Cir. 1987)), and

3. Finally, petitioner also raises (Pet. 36-38) a due process claim concerning the possibility of receiving the $50 pass-through and the "fill the gap" payments. Although recognizing that the court of appeals did not address this issue, petitioner maintains that the result conflicts with *Bennett* v. *White*, 865 F.2d 1395 (3d Cir.), cert. denied, 109 S. Ct. 3257 (1989). Even if the court of appeals in this case had addressed the issue, however, there would be no conflict. *Bennett* had nothing to do with alleged failure by the State to provide particular child support enforcement services and the resulting failure of AFDC recipients to receive pass-through payments under 42 U.S.C. 657(b)(1) or fill-the-gap payments under 42 U.S.C. 602(a)(28). Instead, the court of appeals in *Bennett* recognized a due process interest by AFDC recipients in support payments *actually collected* by the state Title IV-D agency, not (as petitioner asserts here) in the speculative expectation of support payments that might be available if the state agency undertook efforts to establish and enforce support obligations by the absent fathers of petitioner's children – and if the absent fathers then actually made the required support payments. This speculative expectation, which is contingent on a number of factors, does not give rise to a protectable property interest under the Due Process Clause. Petitioner's claim of a due process violation thus does not warrant review.

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one does not even involve Section 1983 at all (see *Allandale Neighborhood Ass'n* v. *Austin Transportation Study Policy Advisory Committee*, 840 F.2d 258, 264 n.19 (5th Cir. 1988)). The fourth does disavow reliance on *Cort* in a footnote (see *West Virginia University Hospitals, Inc.* v. *Casey*, 885 F.2d 11, 18 n.1 (3d Cir. 1989), cert. granted on a different issue, No. 89-994 (Feb. 26, 1990)), but the court's statements are dicta and do not create a conflict warranting review; the court in that case recognized the same *Thiboutot-Sea Clammers-Pennhurst* framework as the court in this case (885 F.2d at 18), and rested its decision on a detailed discussion of the particular statute. *Id.* at 19-21.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

ANTHONY J. STEINMEYER
IRENE M. SOLET
Attorneys

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